

# **RED FLAG LAWS AND UTAH PROTECTIVE ORDERS**

## **AN OVERVIEW**

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# **Extreme Risk Protective Order/ Gun Violence Restraining Order**



**Utah Protective Orders**



**Comparison**

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Types

What States Have Them

Who Can Petition

Notice Requirements

Duration

# What are “Red Flag” Laws?

**Different Names for (Pretty Much) the Same Thing:**

- **Extreme Risk Protective Order (ERPO)**
- **Gun Violence Restraining Order (GVRO)**
- **Etc.**

# RED FLAG LAWS

# CURRENT EXTREME RISK PROTECTIVE ORDER LAWS

## States with ERPOs or Similar Legislation

California  
Connecticut  
Delaware  
Florida  
Indiana

Maryland  
Oregon  
Rhode Island  
Vermont  
Washington

## States with Pending ERPO Legislation

Illinois  
Massachusetts  
Michigan  
New Jersey  
New York

North Carolina  
Ohio  
Pennsylvania

## States with Failed ERPO Legislation

Alabama  
Alaska  
Arizona  
Colorado  
Hawaii  
Iowa  
Kansas

Kentucky  
Louisiana  
Maine  
Minnesota  
Missouri  
Tennessee  
**Utah**



- **Law enforcement**
- **Spouse**
- **Family members**
- **Other cohabitants**
- **Mental Health provider**
- **Attorney General**
- **District Attorney**
- **Anyone eligible to file for a protective order**

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## ***Ex Parte* or Temporary ERPO**

- Issued without notice to respondent

## **“Permanent” ERPO**

- Issued after a hearing and notice to respondent (generally after the *ex parte* or temporary ERPO is served)

Required notice varies by state

## Initial or Preliminary Order

- Reasonable Grounds
- Immediate Danger
- Reasonable Cause
- Probable Cause

## Hearing

- Clear And Convincing
- Preponderance Of The Evidence

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## ***Ex Parte* or Temporary ERPO**

- 1 to 3 weeks
- Preserves status quo until noticed hearing

## **“Permanent” ERPO**

- 6 months to 1 year
- Potential option to petition for extension/termination before expiration

### Service Of Temporary/Permanent Order

- Firearms Delivered To Local Law Enforcement
- Or
- Firearms delivered to Federal Firearms Dealer for sale/disposal

**Return Of Firearms Upon Expiration “Without Delay”**

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**RED FLAG LAWS**

**Utah Protective Orders**

**Questions?**

◦ STATE OF UTAH ◦

**RED FLAG LAWS**

**Utah Protective Orders**

# Utah Protective Orders

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## **Utah Protective Orders**

Types

Who Can Petition

Notice Requirements

Burden of Proof

Duration



## Criminal Protective Orders

- Jail Release Agreement or Jail Release Court Order
- Pretrial Protective Order
- Sentencing Protective Order
- Continuous Protective Order

## Civil Protective Orders

- Protective Order -- Cohabitants
- Child Protective Order
- Dating Protective Order

## Stalking Injunctions

- Civil
- Criminal

## **Protective Orders that may Impact Firearm Possession**

Sentencing Protective Order

Continuous Protective Order

Cohabitant Protective Order

Child Protective Order

Dating Protective Order

## **Cohabitant Protective Order**

Alleged victim against a cohabitant

## **Child Protective Order**

Any interested person after first making a referral to the Division of Child and Family Services

## **Dating Protective Order**

Alleged victim against a dating partner

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**Cohabitant Protective Order** Domestic violence or abuse has occurred or there is a “substantial likelihood” domestic violence or abuse will occur

## **Child Protective Order**

A child is being abused or is in “imminent danger” of being abused

## **Dating Protective Order**

A person has been subjected to or there is a “substantial likelihood” the person will be subjected to dating violence or abuse by a dating partner

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***Ex parte* or temporary protective orders last until a hearing is held to determine whether a “permanent” protective order is necessary**

A hearing for a “permanent” protective order must be set no later than 20 days after the *ex parte* order is made.

## **“Permanent” Protective Orders**

**Cohabitant Protective Order:** 150 days, review hearing after 2 years; automatic expiration after 10 years.

**Child Protective Order:** 150 days, unless a different date set by the court; automatic expiration when the child reaches age 18.

**Dating Protective Order:** 180 days.

**A protective order may be extended if the court finds the protective order is still necessary after expiration**



# RED FLAG LAWS

## COMPARING ERPO AND UTAH PROTECTIVE ORDERS

ERPO/GVRO	UTAH PO
<b>TYPES</b>  <i>Ex Parte</i> (Preliminary) Permanent	  X X
<b>PETITIONERS</b>  Spouse/Cohabitant Law Enforcement Family Members Others (DA, AG, Mental Health Provider)	  X  X (Cohabitants) X (Interested person)
<b>BURDEN OF PROOF</b> <u><i>Ex Parte</i> (or Preliminary)</u> Reasonable Grounds Immediate Danger Reasonable Cause Probable Cause  <u>Permanent</u> Clear and Convincing Preponderance of the Evidence	       X (Imminent Danger)
<b>DURATION</b>  <i>Ex Parte</i> : Up to 3 Weeks Permanent: 6 mos-1 year *extension possible	  X (20 days) X (Depends on type) X
<b>REASONS</b> Imminent Danger or Threat to Self or Others	Substantial Likelihood Imminent Danger (child)

Preventing Abuse Of The Process

Storage

Notice

- **Protective Order Database**
- **Bureau of Criminal Identification / NICS**

Non-Firearm Owner

**RED FLAG LAWS**

**QUESTIONS**

**QUESTIONS?**

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